IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(214)

CM-17317-CWP-2022 in/and
CWP-15305-2017
Date of decision: - 06.01.2023

Rajesh Verma and another

....Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Vivek K. Thakur, Advocate, for the petitioners.

Mr. Alankar Narula, AAG, Punjab.

****

VIKAS BAHL, J. (ORAL)

CM-17317-CWP-2022

Present application has been filed under Section 151 CPC for seeking preponement of the date of hearing of the main case, which is fixed for 09.03.2023.

Learned State counsel has submitted that he has no objection in case the date of hearing of the main case is preponed from 09.03.2023 to today.

In view of the above, the present application is allowed. The date of hearing of main case is preponed from 09.03.2023 to today.

CWP-15305-2017

Petitioners have filed the present petition under Article 226 of the Constitution of India for issuance of an appropriate writ, order or direction, especially a writ in the nature of certiorari for setting aside the letter No.315-323/DRA dated 05.06.2014 (Annexure P-9) whereby general directions have been issued to the authorities that the note given in the jamabandi with respect to land being Nazool land would remain intact and stay on registries would continue.

2. Learned counsel for the petitioners has submitted that Nazool land measuring 71 kanals 3 marlas, was allotted in the name of Punjab Singh son of Wasawa Singh resident of Nurpur Dona, Tehsil and District Kapurthala, vide allotment letter dated 04.04.1968. It is further submitted that all the installments had been paid by the said Punjab Singh prior to 1969 and on 27.03.1969 the sale certificate was issued in favour of the said Punjab Singh. It is also submitted that the petitioners had purchased a part of the said property vide sale deeds dated 21.01.1997 and 07.09.1997. It is stated that at the time of the allotment of the said land in favour of Punjab Singh, Rule 7 of the Nazool Lands (Transfer) Rules, 1956 (for short 'the Rules'), which was applicable, did not provide for any embargo on the transfer of land after the last installment of the price had been paid. It is stated that subsequently the said rule was amended by a notification dated 28.10.1970 (Annexure P-4) and the said restriction had been imposed on the transfer of Nazool Land and as per the notification dated 28.10.1970 (P-4), the individual member or the cooperative society to whom the land had been allotted could not transfer the land for a period of ten years from the date the said cooperative society or the individual member of scheduled castes had got the right, title and interest in the said Nazool land and even thereafter, the alienation was strictly restricted to the member of the scheduled castes only. It is stated that further a notification dated 18.03.1991 (Annexure P-6) was issued, vide which the amendment was made in Rule 7.1 of the Rules,

as per which, no cooperative society or individual member of the scheduled castes was permitted to alienate, mortgage, or sell the Nazool Land. It is argued that a show cause notice was issued against the petitioners for having purchased the property in question in violation of the amended rules, to which the reply had been filed and the District Collector, Kapurthala, vide a detailed order dated 25.06.2014 (Annexure P-8) had, after considering the entire facts as well as law on the point, observed that since the allotment was made in favour of the Punjab Singh, who is the predecessor in interest of the petitioners, in the year 1968, and the said allottee had made the requisite payment in the year 1968 itself and the sale certificate was also issued on 27.03.1969 (i.e. prior to the amendment in Rule 7) and thus, the said land had come out of the purview of the government and the government had no concern with the same and the amendment in the Rules, which was made subsequent to the sale certificate having been issued in favour of the said Punjab Singh, was not applicable to the land sold in favour of the said Punjab Singh and thus, the purchase of the land by the petitioners was held to be valid as per law and the notices given to the petitioners were withdrawn. It is argued that the said order had attained finality. Learned counsel for the petitioners has submitted that vide letter dated 05.06.2014 (Annexure P-9), the same Deputy Commissioner, Kapurthala, had issued general directions to the effect that the note regarding Nazool land which had been given in the jamabandis would remain intact and the stay on the Registries would continue. It is further submitted that on account of the said letter, the petitioners, who are the absolute owners of the property purchased by them, are not able to exercise all the rights in the said property. It is stated that one Sukhdev Singh had filed a CWP-26937-2017 on identical facts and the Co-ordinate Bench of this Court vide judgment dated 21.10.2022

(Annexure P-11) was pleased to allow the said writ petition and specifically observed that the sale in favour of the petitioner therein was not illegal and he had acquired full rights in respect of his plot of land and further clarified that the communication dated 05.06.2014 did not apply to the land purchased by the petitioner therein. It is stated that the case of the present petitioners is squarely covered by the said judgment. It is also stated that the said judgment has attained finality and no LPA has been filed by the respondent-State against the same. Learned counsel for the petitioner has prayed that in terms of the said judgment, it be clarified that the communication dated 05.06.2014 would not apply to the land purchased by the petitioners.

3. Learned State counsel on the other hand has opposed the present writ petition and has submitted that the Rule 7 of the Rules had been amended on 28.10.1970 and thereafter on 18.03.1991 and on the basis of the amended rules, the authorities are well within their right to apply the bar placed on the sale of the Nazool land. It is, however, not disputed that the matter in issue is covered by the judgment of a Co-ordinate Bench of this Court dated 21.10.2022 passed in CWP-26937-2017.

4. This Court has heard learned counsel for the parties and has perused the record.

5. A Co-ordinate Bench of this Court in ***Sukhdev Singh's*** ***case (supra)*** while adjudicating the issue similar to the issue raised in the present petition and after considering the relevant rules, had held as under: -

> *"The Nazool Land (Transfer) Rules, 1956 (hereinafter referred to as the Rules) were enacted for promoting cooperative agriculture in the State of Punjab. Pursuant thereto, thirty six Scheduled Caste people of village Mansurwal Dena, District Kapurthala formed a Harijan Cooperative Society (hereinafter referred to as the Society) and received by way of transfer total of 1488 kanals and 02 marlas of land*

on payment of sum of Rs.29,966.30 paise. Order of transfer is dated 30.7.1956. The consideration was to be paid in 20 half yearly instalments. Last instalment was paid on 7.2.1966, whereafter, Sale Certificate dated 28.6.1971 was issued in favour of the said Society. Sometime in the year 2003, the petitioner purchased a 400 sq. yard plot from the aforementioned Society and constructed his residential house thereupon.

Alleging illegal sale of nazool land in the State of Punjab, Soma Singh and others filed CWP-5085-2011 in public interest. The State of Punjab was directed to take remedial action. Finally, it was noticed that the nazool land illegally sold had been identified and show cause notices had been issued to original allottees and purchasers. Recording its satisfaction with the action taken, the writ petition was disposed of by a Division Bench of this Court with directions to place on record action taken report after six months. Accordingly, the petitioner was issued a show cause notice dated 22.1.2014. He submitted his detailed reply and vide order dated 9.5.2014, the notice was withdrawn after finding that at the time of issuance of conveyance deed, there was no stipulation in the Rules that there could be no sale after execution of conveyance deed and thus, the sale in favour of the petitioner was legal and valid. This order has not been challenged any further by the State of Punjab.

The petitioner is aggrieved because a communication dated 5.6.2014 has been issued by respondent No.3 to the revenue authorities that note in the revenue record pertaining to nazool land be maintained as earlier and that execution of sale deeds was prohibited. Representations were made to the Financial Commissioner (Revenue) Punjab as well as the Deputy Commissioner, Kapurthala to withdraw the said communication so far as it pertained to the land of the petitioner, but no action was taken.

xxx xxx xxx xxx xxx xxx xxx xxx

Original Rule 7 was as under:-

> *'7.* ***Bar of alienation****:- No Cooperative Society to which land has been transferred shall at any time before the last instalment of price has been paid, except with the express permission in writing of the State Government, alienate, whether permanently or temporarily, the nazool land transferred to it.*

Provided that in granting permission the State Government shall have regard to the general interests of the Cooperative Society.

2. Where the State Government permits a Cooperative Society to permanently alienate the nazool land transferred to the Society, the provisions of Rule 4 shall not be apply in respect of such land.'

The above Rule was substituted vide Notification dated 28.10.1970 and the substituted Rule was as follows:-

*'**Bar of alienation**: (1) No Cooperative Society or the individual member of Scheduled Castes, as the case may be, shall, except with the express permission in writing to the State Government, alienate, whether permanently or temporarily, the nazool land transferred to it/him for a period of ten years from the date of the Cooperative Society or the individual member of Scheduled Castes gets all rights, title and interest in the said nazool land. Thereafter, its alienating shall be strictly restricted to the members of the Scheduled Castes only.*

Provided that in granting permission, the State Government shall have regard to the general interests of the Cooperative Society or individual member, as the case may be.'

As on date, Rule 7 is as under and was substituted vide Notification dated 18.3.1991:-

*'7. **Bar on alienation**:- No Cooperative Society or the individual member of Scheduled Castes, as the caste may be, shall alienate or sell or mortgage the Nazool Land shall go down any in inheritance.*

Provided that a Cooperative Society or a member of a Scheduled Castes to whom such land has been transferred under these Rules may improbably alienate such land in favour of the Punjab Scheduled Caste Land Development and Finance Corporation and Scheduled Banks for securing a loan with a view to improving this land provided the extent of area so alienated shall not exceed the proportion of the land for which price has been paid to the Government.'

Rule 7 aforestated as substituted from time to time is in respect of 'bar of alienation'. When the Rules were enacted in the year 1956, the bar of alienation was restricted to the date of payment of last instalment. Thereafter, a transferee had full right to deal with his land.

Post the substitution vide Notification 28.10.1970, the transferee could not alienate his land for a period of 10 years from date of acquisition of full ownership rights which obviously was the date of payment of final instalment. Even thereafter, alienation was restricted in favour of members of Scheduled Castes only. The Rule as substituted vide Notification dated 18.3.1991 and as it presently exists, completely bars a transferee from alienating his land in any manner, whatsoever. Transfer through inheritance is also forbidden. Obviously, over a period of time, the appropriate legislature has felt that nazool lands transferred in favour of the Scheduled Castes were being mis-utilized and the original purpose had been diluted. Thus, the efforts appear to be to retain the land within Scheduled Castes families and thereafter be escheated in favour of the State.

The above, however, does not affect interpretation of the Rule 7 as it exists today i.e. post substitution by the Notification dated 18.3.1991. As the facts narrated hereinbefore clearly reveal the last instalment was paid on 7.2.1966 and conveyance deed was executed on 28.6.1971. Full ownership rights stood vested in the transferee i.e. the Society on payment of the price. Conveyance deed only evidenced the vesting of full proprietary rights and was a ministerial act. According to the Rule 7 in force at that point in time, the transferee possessed unfettered right of alienation and the same was a vested right. The petitioner purchased his small plot of land in the year 2003, when Rule 7 as substituted vide Notification dated 18.3.1991 was in force. The same completely barred alienation in any manner, whatsoever. If this Rule was to apply to this case, it would amount to abrogation of rights vested in the Society in the year 1966 which in turn would entail retrospective application of the Rule in force today.

Is such retrospective application permissible in law?

Substituted Rule 7 as existing on the statute book as on date has been reproduced hereinabove. The same has not been made applicable retrospectively, either, explicitly or implicitly. On the contrary, the proviso thereto makes it clear that the said Rule is applicable only to cases, where, complete ownership rights have not been acquired. By virtue thereof, alienation is permissible for raising money for improvement of the land, but only to the extent of the land in respect of which full price has been paid. Such can be the situation only, where, a transferee has not yet paid the last instalment. Thus, the said Rule is not retrospective in nature. It governs only those cases, where, full price has still not been paid. This view is re-inforced by a Division

Bench judgment of this Court in Scheduled Castes Cooperative Society Vs. State of Punjab and another, AIR 2005 (P&H) 100. In this case, Rule 7 as substituted by Notification dated 28.10.1970 came up for interpretation and it was held that the said Rule would not apply to a case, where, the transferee had acquired title to the property earlier. Para 26 thereof is reproduced:-

> *'26. The facts, as fully detailed above, do reveal that the petitioner Society had complete title of the property transferred to it without there being any embargo to alienate it or in part. In the facts and circumstances, as mentioned above, there was no justification for the authorities, to put an embargo on the right of the petitioner Society to alienate the land, wholly or in part and, therefore, the condition mentioned in the sale deed would and cannot be binding upon the petitioner Society. The authorities, it appears, have inserted the condition in the sale deed only on account of change in the Rules 7 and 11 of the Rules had since been substituted by virtue of Notification dated 28.10.1970 i.e. before the sale deed came to be executed. Once, the petitioner Society was vested with complete title of the land and had a right to alienate the same being an absolute owner far before Notification dated 28.10.1970 came into being, conditions of non-alienation incorporated in the sale deed on the dint of amended provisions of the Rules, could not be binding upon it.'*

Resultantly, the sale in favour of the petitioner is not illegal. By virtue thereof, he has acquired full rights in respect of his plot of land and the same cannot be curtailed in any manner by an executive decision.

The writ petition is, accordingly, allowed. It is clarified that communication dated 5.6.2014 (Annexure P-4) does not apply to the land purchased by the petitioner."

A perusal of the said judgment would show that the original Rules as well as the amended rules had been considered therein and since even in the above-said case, the payment of the last installment had been made prior to the passing of the notification dated 28.10.1970, thus, it was observed that the full ownership rights in respect of the plot of land in question therein stood vested in the allottee in the above-said case and as per Rule 7 of the Rules which was in force at that point in time, the transferee possessed unfettered right of alienation and the same was a vested right and the said right could not be curtailed by virtue of any subsequent amendment in the rule and it was also held that the amendment in the said Rule was not retrospective in nature. Further, reliance was also placed upon a Division Bench of this Court in "***Scheduled Castes Cooperative Society Vs. State of Punjab and another***, ***reported as AIR 2005 (P&H) 100*** and the writ petition filed by the petitioner therein was allowed and it was clarified that communication dated 05.06.2014 would not apply to the land purchased by the petitioner therein. It would be relevant to note that even in the above-said case, the petitioner Sukhdev Singh who had filed the said writ petition had purchased the property in the year 2003, which was after the amendments made in Rule 7 of the Rules.

6. The case of the present petitioners is squarely covered by the judgment of the Co-ordinate Bench of this Court in ***Sukhdev Singh's case (supra)***, inasmuch as, even in the present case it is not in dispute that the allotment in favour of the Punjab Singh son of Vasawa Singh, the predecessor in interest of the petitioners, was made on 04.04.1968 and the possession was also handed over to the said allottee in the year 1968 itself and all the installments were paid by him in the year 1968 and thereafter the sale certificate was also issued in favour of Punjab Singh Singh on 27.03.1969, which is prior to the amendments made in Rule 7 of the Rules. The order dated 25.06.2014, which was passed by the District Collector, Kapurthala after the show cause notice was issued to the petitioners for having purchased the property which was Nazool property, would also show that after considering the facts of the case, it was found that since the

allotment made in favour of the predecessor in interest of the petitioners was of the year 1968 and the requisite payment had also been made in the year 1968 itself and the said land had come out of the purview of the government and the government had no concern with the same, the sale of the said land to the petitioners was thus, valid and the notices were withdrawn. It is not in dispute that the said order had attained finality.

7. Keeping in view the facts and circumstances, more so, the fact that the case of the present petitioners is squarely covered by the judgment of the Co-ordinate Bench of this Court in ***Sukhdev Singh's case (supra)***, the present writ petition is allowed and it is observed that the sale of the land in question in favour of the petitioners is not illegal and they had acquired full rights in respect of the land purchased by them and the same cannot be curtailed in any manner by any executive decision.

8. It is clarified that the communication dated 05.06.2014 (Annexure P-9) does not apply to the land purchased by the petitioners.

(VIKAS BAHL)
JUDGE

January 06, 2023
naresh.k

Whether speaking/reasoned:- Yes
Whether reportable:- Yes